



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/158436

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on August 05, 2014, at West Bend, Wisconsin.

The issue for determination is whether the Washington County Department of Social Services correctly determined the Petitioner was overpaid BadgerCare+ benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tony Gehrig, Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner's wife, is the primary person on the BadgerCare+ case, but Petitioner received benefits as part of her case. (Testimony of Tony Gehrig - Economic Support Specialist; Exhibits 3-6)

3. In March 2013, Petitioner left his job at [REDACTED] and started a new job with [REDACTED] (Testimony of Petitioner)
4. Sometime around May 2014, Petitioner's wife started working at the [REDACTED] (Testimony of Petitioner)
5. Neither Petitioner nor his wife reported the changes in employment/income. (Testimony of Petitioner)
6. On May 5 or May 6, 2014, the agency sent Petitioner's Wife, a Wisconsin Medicaid and BadgerCare Plus Overpayment Notice indicating that she had been overpaid benefits in the amount of \$1,303.25 for the period of April 1, 2013 to December 31, 2013. (Exhibit 2; Exhibit 8, Testimony of Mr. Gehring)
7. On or about those same dates, the agency sent Petitioner's wife another Wisconsin Medicaid and BadgerCare Plus Overpayment Notice indicating that she had been overpaid \$23.00 in benefits for the period of July 1, 2013 to July 31, 2013. (Exhibit 2; Exhibit 11, Testimony of Mr. Gehring)
8. The agency has no record of sending an overpayment notice to Petitioner. (Testimony of Mr. Gehring)
9. On June 3, 2014, the agency sent a repayment agreement to the Petitioner. (Exhibit 9)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 17, 2014. (Exhibit 1)

DISCUSSION

An “overpayment” occurs when BadgerCare+ benefits are paid for someone who was not eligible for them, or when BadgerCare+ payments are made in an incorrect amount. Some examples of how overpayments occur are concealing or not reporting income, failure to report a change in income, and/or providing misinformation at the time of [application](#) regarding any information that would affect eligibility. *Wis. Stat. § 49.497; BadgerCare+ Eligibility Handbook (BEH+) § 28.1.*

The agency is required to initiate recovery of BC+ overpayments, if the incorrect payment resulted from applicant/member error; fraud/intentional program violation or member loss of an appeal. *BEH+ §28.2*

Overpayments may not be recovered under the following circumstances:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

BEH+ §28.3

“The benefit recovery period for incorrectly paid benefits shall be limited to one year prior to the date that the overpayment is discovered.” *Wis. Admin. Code §DHS 2.04(1)(b)*

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence of correct action by the agency.

When seeking recoupment of a BadgerCare+ overpayment, the agency must notify the member of the period of ineligibility, the reason for his/her ineligibility, the amounts incorrectly paid and it must request arrangement of repayment within a specified period of time. *BEH §28.5*

In the case at hand, the agency did not issue an overpayment notice to the Petitioner. As such, if the agency wishes to pursue an overpayment against the Petitioner, it will have to issue to him an overpayment notice and an overpayment worksheet, explaining the overpayment.

If Petitioner still disagrees with the agency's calculations and/or determination that he was overpaid benefits, he must file a **new** appeal.

It should be noted that the agency's exhibits did not include the overpayment worksheet and as such, it was not entirely clear how the overpayment was determined. For future reference of the parties, it should be noted that through March 31, 2014, for adults to be eligible for BadgerCare+, they needed to have income at or below 200% FPL. *BEH §16.1.1* Children had no income limit. *Id.* However, children with household incomes over 200% of FPL needed to pay a premium. (*BEH 19.1 – Release 13-02*) In 2013, the year of the overpayment period, 200% of FPL for a family of four was \$3925. The FPL table for 2013 can be found on-line at:

<http://aspe.hhs.gov/poverty/13poverty.cfm>

CONCLUSIONS OF LAW

The agency did not follow the correct steps to recoup an overpayment from the Petitioner.

THEREFORE, it is

ORDERED

The agency shall issue to the Petitioner an overpayment notice with overpayment worksheets, setting forth how the agency calculated Petitioner's income during the overpayment period and how it calculated the overpayment, itself. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of August, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 27, 2014.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability